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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

JORDAN ROSENBERG, Plaintiff and Appellant, v. TOSHIBA AMERICAN INFORMATION SYSTEMS, INC., Defendant and Respondent.	A152972 (Alameda County Super. Ct. No. RG17844031)

A retail customer, appellant Jordan Rosenberg, brought suit against a laptop manufacturer, respondent Toshiba American Information Systems, Inc. (Toshiba), alleging he was defrauded by an advertised $50 rebate on a laptop he bought from an Office Depot store, because Toshiba paid the rebate to him in the form of a pre-paid Visa debit card rather than in cash. Praying for $1 million in monetary relief "or more" as well as injunctive relief, he asserted two claims: for fraud, and violation of Business and Professions Code section 17200. The trial court sustained a demurrer to his first amended complaint without leave to amend and entered a judgment of dismissal from which Rosenberg now appeals. We affirm.

DISCUSSION

Although Rosenburg's briefing is vague in some respects, we understand him to raise three issues on appeal.

First, captioned under a heading stating the trial court "sustained Toshiba's demurrer based on a misreading of the law, fake facts, and lapses in logic," he asserts nine points about the demurrer ruling under separate subheadings in four pages of

argument. We refrain from summarizing those points, however, because on appeal we are required to presume that the demurrer ruling is correct unless the appellant persuades us otherwise (see *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655), and Rosenberg has not met his burden to persuade us the demurrer ruling was wrong. He does not attempt to show that his factual allegations alleged a viable cause of action under the governing substantive law (nor, alternatively, that he could have stated a valid claim had he been given yet a second chance to amend his complaint in some fashion). He does not even discuss or analyze the legal elements of the causes of action he tried to plead. Instead, his brief attacks snippets of the trial court's reasons, which is insufficient to show his pleading should have withstood demurrer. We review the correctness of the court's demurrer ruling not its reasons. (*Fierro v. Landry's Restaurant Inc.* (2019) 32 Cal.App.5th 276, 286.)

Given the inadequacy of Rosenberg's appellate argument, it is unnecessary to discuss the substance of his two causes of action. We note, however, what is perhaps the most obvious difficulty with them. As Rosenberg concedes in his opening brief, injury is an essential element of his claims (at page 22: "Here's how fraud works They lie to you, they conceal, you buy, you discover you didn't get what you paid for, and you are injured"; and page 23: arguing "[i]t was error for the court to rule that Rosenberg suffered no injury in fact"). Yet he has not shown that he alleged any injury, and we do not perceive any. He argues (at page 22) that "[h]e was injured to the tune of $50," yet as we understand his allegations that is exactly the value he received in the form of a debit card.[1]

Second, Rosenberg raises a procedural issue: he argues the demurrer Toshiba filed to his original complaint (which was sustained with leave to amend) should have

[1] His amended complaint also alleges that, unlike cash, a debit card expires, is not accepted by all vendors, and is not accepted worldwide. But even assuming those differences could theoretically constitute legally cognizable harm (Rosenberg cites no legal authority addressing whether they can), Rosenberg does not allege that any of these supposed harms ever came to pass. On the contrary, he alleges he "never cashed" his debit card, so these allegations of supposed harm are purely speculative.

been rejected as untimely, and "Toshiba should have been found in default." Specifically, he contends the trial court erred by granting Toshiba an automatic extension of time to demur to the complaint, because Toshiba began meeting and conferring with him only four days before the initial demurrer deadline, rather than five as required by statute (see Code Civ. Proc., § 430.41, subd. (a)(2)), which was one day late.[2] Furthermore, he implies the problem was compounded when Toshiba's attorney committed "perjury" by filing a declaration stating erroneously that he had met the five-day cutoff. He raised this issue both in an objection to opposing counsel's declaration seeking the automatic extension, and again in a self-styled "motion for judgment on the pleadings" filed after Toshiba filed its (untimely, according to Rosenberg) demurrer.

It is unnecessary to decide whether Rosenberg's interpretation of Code of Civil Procedure section 430.41's automatic extension language is correct because any error, assuming there was one, was harmless. (See Cal. Const., art. VI, § 13; Code Civ. Proc., § 475.) Rosenberg has not demonstrated he was prejudiced by Toshiba's failure to meet and confer with him one day earlier than it did. In addition, the trial court ruled that even

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[2] Recently enacted Code of Civil Procedure section 430.41, which took effect on January 1, 2016, on a trial, five-year basis (see Stats. 2015, ch. 418, § 1), requires a party to meet and confer before demurring to a pleading to determine whether the party's objections to the pleading can be resolved by mutual agreement, and to do so at least five days before the demurring party's responsive pleading is due. (See Code Civ. Proc., § 430.41, subds. (a), (b).) Subdivision (a)(2) provides for an automatic 30-day extension of time within which to plead "[i]f the parties are not able to meet and confer at least five days prior to the date the responsive pleading is due," provided the demurring party "fil[es] and serv[es], on or before the date on which a demurrer would be due, *a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made* and explaining the reasons why the parties could not meet and confer" (italics added). The only reported decision construing this statute, decided shortly before oral argument in this case, holds that the trial court is not divested of jurisdiction over a demurrer filed by a defendant who fails to comply with the statute's meet-and-confer requirements, because the statute "does not contain any penalties" for failing to do so. (*Olson v. Hornbrook Community Services District* (Mar. 26, 2019, C084494) __Cal.App.5th __ <http://www.courts.ca.gov/opinions/documents/C084494.PDF> [p. 11].)

had it adhered to the technical letter of the five-day meet and confer deadline and then gone on to enter Toshiba's default, it inevitably would have relieved Toshiba of the default under the circumstances because the one-day "discrepancy" was "inconsequential" and the delay was "minimal." (See Code Civ. Proc., § 473, subd. (b).) It would have been a pointless waste of time to strike the demurrer on technical grounds, only to make the parties and the court go through that extra step before the demurrer was re-filed.

Finally, Rosenberg argues the trial court erred in denying his application to name Office Depot and two other individuals as Doe defendants. The argument is forfeited because it consists of seven sentences (including two rhetorical questions) supported by no legal authority. " 'Appellate briefs must provide argument and legal authority for the positions taken.' [Citation.] 'When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.' [Citation.] If an argument in an appellate brief is supported by only an opinion or argument . . . without 'citation to any recognized legal authority,' that argument may be deemed waived for failure to present supporting substantive legal analysis." (*In re A.C.* (2017) 13 Cal.App.5th 661, 672.) Furthermore, had the issue not been waived we would reject it. As discussed above, Rosenberg has not demonstrated he alleged any cognizable injury, and so the complaint would not have stated any valid cause of action against the defendants he sought to add.

DISPOSITION

The judgment is affirmed. Respondent shall recover its appellate costs.

STEWART, J.

We concur.

KLINE, P.J.

RICHMAN, J.

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